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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT M. H. DUNN, VICTOR S. CHAN, BRENDA M. LAM, WAN NGAI W. LEE, LEV MIRLAS, and PAUL K. H. YU

Appeal 2009-002898
Application 10/666,799
Technology Center 2100

Decided: January 25, 2010

Before ST. JOHN COURTENAY III, DEBRA K.STEPHENS, and JAMES R. HUGHES *Administrative Patent Judges*.

COURTENAY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-5 and 22-36. Claims 6-21 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

THE INVENTION

Appellants' invention relates generally to data processing. More particularly, Appellants' invention relates to accessing information in an e-commerce system. (Spec. 1. para. 1).

Claim 1 is illustrative:

> 1. A method of accessing data regarding commerce assets such as products or services offered at virtual stores participating in a virtual marketplace, the assets being organized by types, each type being enabled to include all versions of an asset, said method comprising the steps of:
>
> establishing a storepath relationship to correlate asset types among the virtual stores;
>
> consulting the storepath relationship for the asset type of a particular asset upon receiving a query from a user, the query including the particular asset and a particular virtual store indicating the virtual store at which the user desires to shop; and
>
> returning data representing all the versions of the particular asset to the user as a response to the query.

PRIOR ART

The Examiner relies upon the following reference as evidence:

Nowers	US 2003/0033205 A1	Feb. 13, 2003

THE REJECTION

The Examiner rejected claims 1-5 and 22-37 under 35 U.S.C. § 102(e) as anticipated by Nowers.

CLAIM GROUPING

Based on Appellants' arguments in the Appeal Brief, we will decide the appeal on the basis of representative claims 1, 2, and 3. See 37 C.F.R. §41.37(c)(1)(vii).[1]

APPELLANTS' CONTENTIONS

1. Appellants contend that Nowers does not disclose the limitation "consulting the storepath relationship *for the asset type of a particular asset* upon receiving a query from a user, the query including the particular asset and *a particular virtual store* indicating the virtual store at which the user desires to shop." (App. Br. 6; claim 1).

2. Appellants further contend that Nowers does not disclose that the query is from a *shopper*. (App. Br. 6; Reply Br. 2; claim 1).

[1] This decision considers only those arguments that Appellants submitted in the Appeal and Reply Briefs. Arguments that Appellants could have made but chose not to make in the Briefs are deemed to have been waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

3. Appellants contend that the Internet retailers disclosed in Nowers do not anticipate the claimed "particular virtual store." (Reply Br. 3-4).

4. Appellants contend that Nowers does not teach that the data is returned as a result of a query from a *shopper* as opposed to a *vendor*. (See App. Br. 8-9; claim 2).

5. Appellants contend that Nowers does not disclose that all of the Internet retailers that have selected to sell a product will be displayed to the *shopper*, as opposed to an *Internet retailer*. (See App. Br. 9-10; claim 3).

PRINCIPLES OF LAW

CLAIM CONSTRUCTION

"[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)).

ANTICIPATION

For a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of the claimed invention must be identically shown in a single reference. However, this is not an "ipsissimis verbis" test. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). Therefore, we look to Appellants' Briefs to show error in the Examiner's proffered prima facie case.

FINDINGS OF FACT

In our analysis *infra*, we rely on the following findings of fact (FF):

NOWERS

1. Nowers is directed to an electronic storefront. (Abst. ll. 1-5).

2. Nowers discloses a selection of the products option, which exposes a drop down menu. A search for a product can be performed across all categories or can be limited to a selected category field. (Para. [0110]; Fig. 3a).

3. Nowers discloses additional product search criteria fields that allow searches to be limited to new products, updated products and/or products associated with Internet retailers with whom the vendor has deals. (Para. [0111]).

4. Nowers discloses a product list page that identifies the names of vendors selling the products and the names of the products. (Para. [0165; Fig. 7d).

Independent claims 1, 22, 27, and 32

Appellants contend that Nowers does not disclose the limitation "consulting the storepath relationship *for the asset type of a particular asset* upon receiving a query from a user, the query including the particular asset and *a particular virtual store* indicating the virtual store at which the user desires to shop." (App. Br. 6; representative claim 1).

Issue: Have Appellants shown the Examiner erred in determining that Nowers discloses "consulting the storepath relationship *for the asset type of a particular asset* upon receiving a query from a user, the query including the particular asset and *a particular virtual store* indicating the virtual store at which the user desires to shop?"

Analysis

We begin our analysis by broadly but reasonably construing the claim term "user." (See claim 1). We particularly note that Appellants have not used the argued term "shopper" in the claims.[2] (*Id.*).

In particular, Appellants contend that the claimed "user" is a "shopper" based on the recited limitation ". . . at which the user desires to shop;". (App. Br. 6 and Reply Br. 2). We further note that according to claim 1, the user: (1) is not positively recited as purchasing anything; and (2) is not positively recited as actively shopping.

We find that the usual and customary meaning of the term "shopper" is to examine goods for purchase. The claim language does not positively require the user to examine and purchase items. Accordingly, we construe the claimed "user" as broadly but reasonably reading on a person that examines goods that are for sale.

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[2] Patentability is based upon the claims. "It is the *claims* that measure the invention." *SRI Int'l v. Matsushita Elec. Corp. of America*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (*en banc*). A basic canon of claim construction is that one may not read a limitation into a claim from the written description. *Renishaw plc v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998).

As noted above, Appellants contend that Nowers does not disclose the aforementioned limitations and instead teaches that a vendor (as opposed to a shopper) can search his/her own inventory for products, update the product catalog, and display the Internet retailers that are authorized to sell its products. (App. Br. 6).

Based on the above construction, we agree with the Examiner's findings with respect to the limitations argued by Appellants. (Ans. 6-7). As noted by the Examiner, Nowers discloses in Fig. 3b a keyword search that lists categories (i.e., apparel, luggage) from which the user can examine goods, and the search can be further refined (i.e., the claimed "asset type of a particular asset"). (Ans. 6-7).

We further find that Nowers discloses a "particular virtual store." (FF 1). Nowers is directed to an electronic storefront which we find anticipates the claimed "particular virtual store" because the electronic storefront exists in essence or effect, though not in actual form. Therefore, we find Nowers' electronic storefront is "virtual." The inventory of the electronic store (particular virtual store) is what is being searched by the vendor (user). (FF 2-3). Therefore, we find that Nowers discloses a particular virtual store (electronic storefront) that is searched by a user.

Regarding Appellants' argument that Nowers does not teach "returning data representing all versions of the particular asset to the user as a response to the query" (App. Br. 7), we note that Appellants merely recite the language of the claim followed by a conclusory statement that this limitation is not taught by Nowers. (App. Br. 7). This form of argument, however, is wholly ineffective in demonstrating error in the Examiner's

prima facie case to establish the patentability of the claims on appeal. *See Ex parte Belinne*, No. 2009-004693, slip op. at 7-8 (BPAI Aug. 10, 2009) (informative), *available at* http://www.uspto.gov/web/offices/dcom/bpai/its/fd09004693.pdf

Thus, Appellants have not met their burden of showing specific error in the Examiner's findings of fact. *See* 37 C.F.R. § 41.37(c)(vii)("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim."). *See also* 37 C.F.R. § 1.111(b). Specifically, in the Brief, Appellants do not make any substantive arguments to distinguish the aforementioned limitation from the portions of the reference relied on by Examiner. In contrast, the Examiner presents findings, referencing the disclosure of Nowers, and addressing this disputed limitation. (Ans. 8-9).

Based on the record before us, we find Appellants have not shown the Examiner erred in rejecting representative claim 1. Accordingly, we sustain the Examiner's rejection of representative claim 1 and independent claims 22, 27, and 32 which fall therewith.

Claims 2, 23, 28, and 33

Appellants contend that Nowers does not teach the data representing availability of all the versions of the particular asset. (Representative claim 2).

Appellants assert that since Nowers does not disclose "returning data representing all versions of the particular asset to the user as a response to the query" as recited in claim 1, Nowers cannot teach the aforementioned

limitation of claim 2. (App. Br. 7). Appellants restate the argument that in the claimed invention data is returned as a result of a query from a shopper (and not from a vendor). (App. Br. 8-9).

Issue: Have Appellants shown the Examiner erred in determining that Nowers fails to disclose the data returned includes data representing availability of all the versions of the particular asset?

Analysis

As discussed *supra*, we did not find Appellants' argument to be persuasive with respect to returning data representing all versions of the particular asset to the user as a response to the query. (See discussion of claim 1). We note that claim 2 (and claim 1) does not recite the argued "shopper" limitation. Therefore, we find Appellants have not shown error in the Examiner's rejection of representative claim 2. Accordingly, we sustain the Examiner's rejection of claim 2, and claims 23, 28, and 33 which fall therewith.

Claims 3, 24, 29, and 34

Appellants contend that Nowers fails to teach the limitations recited in claim 3. (See representative claim 3). More particularly, Appellants contend that Nowers does not teach that all the Internet retailers that have selected to sell a product will be displayed to the shopper. Appellants aver that claim 3, by virtue of claim 1, requires that data is returned as a response to a query from a shopper. (App. Br. 9).

Issue: Have Appellants shown the Examiner erred in determining that Nowers discloses all the Internet retailers that have selected to sell a product will be displayed to the shopper?"

Additional Findings of Fact

5. Nowers disclose a deals page that presents a list of Internet retailers that have deals set up with a vendor concerning the product. (Para. [0124]; Fig. 4d).

Analysis

The Examiner relies on Fig. 4d and paragraph [0124]. (Ans. 9-10). We agree with the Examiner's findings with respect to this limitation. (*Id.*). More particularly, we find that the "deals page" displays all of the Internet retailers that are authorized to sell a particular product. (FF 5). Moreover, we note that the Examiner's findings were not rebutted by Appellants in the Reply Brief. We note again that the argued "shopper" limitation is not claimed, as discussed *supra*. Therefore, we find that Appellants have not shown error in the Examiner's rejection of representative claim 3. Accordingly, we sustain the Examiner rejection of claim 3, as well as claims 24, 29, and 34 which fall therewith.

CONCLUSION

Based on the findings of facts and analysis above, Appellants have not shown the Examiner erred in determining that claims 1-5 and 22-36 are anticipated by Nowers.

ORDER

We affirm the Examiner's decision rejecting claims 1-5 and 22-36 under 35 U.S.C. § 102(e).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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